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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

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| JOSEPH MENICHIELLO, individually) and on behalf of all others similarly) situated,) Plaintiff,) vs.) ROYAL FUNDING GROUP INC., and) DOES 1 through 10, inclusive, and each) of them,) Defendant.) |) Case No. <u>CLASS ACTION</u> COMPLAINT FOR VIOLATIONS OF: 1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)] 2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)] 3. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(c)] 4. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(c)] |
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DEMAND FOR JURY TRIAL

1 Plaintiff JOSEPH MENICHELLO (“Plaintiff”), individually and on behalf
2 of all others similarly situated, alleges the following upon information and belief
3 based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of ROYAL FUNDING GROUP INC.
8 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
9 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
10 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
11 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under 28 U.S.C. § 1331 because this matter
14 arises out of a question of federal law, in particular the Telephone Consumer
15 Protection Act, 47 U.S.C. § 227 *et. seq.*. Thus, this Court has federal question
16 subject matter jurisdiction.

17 3. This Court has specific personal jurisdiction over Defendant because
18 Defendant called Plaintiff on his cellular telephone in the County of Orange,
19 California, which is within this district.

20 4. Venue is proper in the United States District Court for the Central
21 District of California pursuant to 28 U.S.C. § 1391(b)(2) because the conduct that
22 gives rise to Plaintiff’s claims occurred within the State of California and the
23 county of Orange.

24 **PARTIES**

25 5. Plaintiff, JOSEPH MENICHELLO (“Plaintiff”), is a natural person
26 residing in Huntington Beach, California and is a “person” as defined by 47 U.S.C.
27 § 153(39).

28 6. Defendant, ROYAL FUNDING GROUP INC. (“Defendant”) is

1 working capital finance company with its principal place of business in Brooklyn,
2 New York, and is a “person” as defined by 47 U.S.C. § 153(39).

3 7. The above named Defendant, and its subsidiaries and agents, are
4 collectively referred to as “Defendants.” The true names and capacities of the
5 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
6 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
7 names. Each of the Defendants designated herein as a DOE is legally responsible
8 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
9 Complaint to reflect the true names and capacities of the DOE Defendants when
10 such identities become known.

11 8. Plaintiff is informed and believes that at all relevant times, each and
12 every Defendant was acting as an agent and/or employee of each of the other
13 Defendants and was acting within the course and scope of said agency and/or
14 employment with the full knowledge and consent of each of the other Defendants.
15 Plaintiff is informed and believes that each of the acts and/or omissions complained
16 of herein was made known to, and ratified by, each of the other Defendants.

17 **FACTUAL ALLEGATIONS**

18 9. Beginning in or around October of 2017, Defendant contacted
19 Plaintiff on Plaintiff’s cellular telephone number ending in -7270, in an attempt to
20 solicit Plaintiff to purchase Defendant’s marketing services. Plaintiff received such
21 call from Defendant while within the County of Orange, California.

22 10. Defendant used an “automatic telephone dialing system” as defined
23 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

24 11. Defendant contacted or attempted to contact Plaintiff from telephone
25 numbers confirmed to belong to Defendant, including and not necessarily limited
26 to (692) 228-0078.

27 12. Defendant’s calls constituted calls that were not for emergency
28 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

1 22. The class concerning the ATDS claim for no prior express consent
2 (hereafter “The ATDS Class”) is defined as follows:

3 All persons within the United States who received any
4 solicitation/telemarketing telephone calls from
5 Defendant to said person’s cellular telephone made
6 through the use of any automatic telephone dialing
7 system or an artificial or prerecorded voice and such
8 person had not previously consented to receiving such
9 calls within the four years prior to the filing of this
10 Complaint.

11 23. The class concerning the National Do-Not-Call violation (hereafter
12 “The DNC Class,” and with the ATDS Class, “The Classes”) is defined as follows:

13 All persons within the United States registered on the
14 National Do-Not-Call Registry for at least 30 days, who
15 had not granted Defendant prior express consent nor had
16 a prior established business relationship, who received
17 more than one call made by or on behalf of Defendant
18 that promoted Defendant’s products or services, within
19 any twelve-month period, within four years prior to the
20 filing of the complaint.

21 24. Plaintiff represents, and is a member of, The ATDS Class, consisting
22 of all persons within the United States who received any collection telephone calls
23 from Defendant to said person’s cellular telephone made through the use of any
24 automatic telephone dialing system or an artificial or prerecorded voice and such
25 person had not previously not provided their cellular telephone number to
26 Defendant within the four years prior to the filing of this Complaint.

27 25. Plaintiff represents, and is a member of, The DNC Class, consisting
28 of all persons within the United States registered on the National Do-Not-Call
Registry for at least 30 days, who had not granted Defendant prior express consent
nor had a prior established business relationship, who received more than one call

1 made by or on behalf of Defendant that promoted Defendant's products or services,
2 within any twelve-month period, within four years prior to the filing of the
3 complaint.

4 26. Defendant, its employees, and agents are excluded from The Classes.
5 Plaintiff does not know the number of members in The Classes, but believes the
6 Classes members number in the thousands, if not more. Thus, this matter should
7 be certified as a Class Action to assist in the expeditious litigation of the matter.

8 27. The Classes are so numerous that the individual joinder of all of its
9 members is impractical. While the exact number and identities of The Classes
10 members are unknown to Plaintiff at this time and can only be ascertained through
11 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
12 The Classes includes thousands of members. Plaintiff alleges that The Classes
13 members may be ascertained by the records maintained by Defendant.

14 28. Plaintiff and members of The ATDS Class were harmed by the acts of
15 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
16 and ATDS Class members via their cellular telephones thereby causing Plaintiff
17 and ATDS Class members to incur certain charges or reduced telephone time for
18 which Plaintiff and ATDS Class members had previously paid by having to retrieve
19 or administer messages left by Defendant during those illegal calls, and invading
20 the privacy of said Plaintiff and ATDS Class members.

21 29. Common questions of fact and law exist as to all members of The
22 ATDS Class which predominate over any questions affecting only individual
23 members of The ATDS Class. These common legal and factual questions, which
24 do not vary between ATDS Class members, and which may be determined without
25 reference to the individual circumstances of any ATDS Class members, include,
26 but are not limited to, the following:

- 27 a. Whether, within the four years prior to the filing of this
28 Complaint, Defendant made any telemarketing/solicitation call

(other than a call made for emergency purposes or made with the prior express consent of the called party) to an ATDS Class member using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;

- b. Whether Plaintiff and the ATDS Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

30. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The ATDS Class.

31. Plaintiff and members of The DNC Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class members were damaged thereby.

32. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Class. These common legal and factual questions, which do not vary between DNC Class members, and which may be determined without reference to the individual circumstances of any DNC Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose

1 telephone numbers were on the National Do-Not-Call Registry
2 and who had not granted prior express consent to Defendant and
3 did not have an established business relationship with
4 Defendant;

5 b. Whether Defendant obtained prior express written consent to
6 place solicitation calls to Plaintiff or the DNC Class members'
7 telephones;

8 c. Whether Plaintiff and the DNC Class member were damaged
9 thereby, and the extent of damages for such violation; and

10 d. Whether Defendant and its agents should be enjoined from
11 engaging in such conduct in the future.

12 33. As a person that received numerous solicitation calls from Defendant
13 within a 12-month period, who had not granted Defendant prior express consent
14 and did not have an established business relationship with Defendant, Plaintiff is
15 asserting claims that are typical of the DNC Class.

16 34. Plaintiff will fairly and adequately protect the interests of the members
17 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
18 class actions.

19 35. A class action is superior to other available methods of fair and
20 efficient adjudication of this controversy, since individual litigation of the claims
21 of all Classes members is impracticable. Even if every Classes member could
22 afford individual litigation, the court system could not. It would be unduly
23 burdensome to the courts in which individual litigation of numerous issues would
24 proceed. Individualized litigation would also present the potential for varying,
25 inconsistent, or contradictory judgments and would magnify the delay and expense
26 to all parties and to the court system resulting from multiple trials of the same
27 complex factual issues. By contrast, the conduct of this action as a class action
28 presents fewer management difficulties, conserves the resources of the parties and

1 of the court system, and protects the rights of each Classes member.

2 36. The prosecution of separate actions by individual Classes members
3 would create a risk of adjudications with respect to them that would, as a practical
4 matter, be dispositive of the interests of the other Classes members not parties to
5 such adjudications or that would substantially impair or impede the ability of such
6 non-party Class members to protect their interests.

7 37. Defendant has acted or refused to act in respects generally applicable
8 to The Classes, thereby making appropriate final and injunctive relief with regard
9 to the members of the Classes as a whole.

10 **FIRST CAUSE OF ACTION**

11 **Negligent Violations of the Telephone Consumer Protection Act**

12 **47 U.S.C. §227(b).**

13 **On Behalf of the ATDS Class**

14 38. Plaintiff repeats and incorporates by reference into this cause of action
15 the allegations set forth above at Paragraphs 1-37.

16 39. The foregoing acts and omissions of Defendant constitute numerous
17 and multiple negligent violations of the TCPA, including but not limited to each
18 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
19 *47 U.S.C. § 227 (b)(1)(A)*.

20 40. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
21 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
22 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

23 41. Plaintiff and the ATDS Class members are also entitled to and seek
24 injunctive relief prohibiting such conduct in the future.

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SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

42. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-37.

43. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

44. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

45. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class

46. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-37.

47. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

48. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,

1 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory
2 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

3 49. Plaintiff and the DNC Class members are also entitled to and seek
4 injunctive relief prohibiting such conduct in the future.

5 **FOURTH CAUSE OF ACTION**

6 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

7 **Act**

8 **47 U.S.C. §227 et seq.**

9 **On Behalf of the DNC Class**

10 50. Plaintiff repeats and incorporates by reference into this cause of action
11 the allegations set forth above at Paragraphs 1-37.

12 51. The foregoing acts and omissions of Defendant constitute numerous
13 and multiple knowing and/or willful violations of the TCPA, including but not
14 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
15 in particular *47 U.S.C. § 227 (c)(5)*.

16 52. As a result of Defendant's knowing and/or willful violations of *47*
17 *U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of
18 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
19 *§ 227(c)(5)*.

20 53. Plaintiff and the DNC Class members are also entitled to and seek
21 injunctive relief prohibiting such conduct in the future.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

24 **FIRST CAUSE OF ACTION**

25 **Negligent Violations of the Telephone Consumer Protection Act**

26 **47 U.S.C. §227(b)**

- 27 • As a result of Defendant's negligent violations of *47 U.S.C.*
28 *§227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and

request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500,

